IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL WEST ZONAL BENCH AT MUMBAI

Appeal No. C/89204/2018

(Arising out Order-in-Original No. S/26-Misc-492/2017-18/Gr.I dated 28.09.2018 passed by Dy. Commissioner of Customs (NS-I), JNCH, Nhava Sheva)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

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M/s. Star Impex — Appellant

Vs.

Commissioner of Customs (NS-I), Nhava Sheva — Respondent

Appearance:

Shri Stebin Mathew, Advocate for the appellant
Shri Dharmender Singh, Supdt. (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 15-03-2019
Date of decision : 15-03-2019

O R D E R No: A/85507/2019

Per: C J Mathew

The present dispute arises from the question of eligibility to preferential duty on ‘arecanuts’ imported by M/s Star Impex against bills of entry no. 3269204/16.09.2017, no. 3484248/04.10.2017 and no. 3568826/10.10.2017 and in which accompanying documents purported these to be Sri Lankan origin and on the suspicion that these goods had originated from a non-eligible country of export, investigations were taken up for denial of exemption in notification no. 26/2000 dated 1st March 2000 and, owing to the possible delay thereon, at the request of the importer, the goods were provisionally assessed and permitted to be cleared for home consumption *vide* letter no. S/26-Misc-492/2017-18/Gr.I dated 28th September 2018 of Deputy Commissioner of Customs (NS-I), JNCH, Nhava Sheva.

2. Learned Counsel for the appellant contends that the pre-condition for release on submission of bank guarantee, or cash deposit, of 100% of the differential duty arising from assessment on standard rate in *lieu* of the preferential rate afforded by the said notification is harsh and not in consonance with decisions of the Tribunal in identical matters in the past.

3. Learned Authorised Representative questions the propriety of raising this grievance at this stage and before the Tribunal. He

contends that the goods had not been seized, under section 110 of Customs Act, 1962, and hence was not one of provisional release by an adjudicating Commissioner warranting statutory intervention of the Tribunal.

4. On perusal of the records, we find that the issue is one of assessment ordered by an officer below the level of Commissioner of Customs; it is also seen that the present grievance has arisen out of an order of provisional assessment under section 18 of Customs Act, 1962 which obliges the proper officer to secure revenue by appropriate securities. Undoubtedly, securities that are prescribed should be in accordance with the Rules/Regulations, if any. Nevertheless, the consideration of provisional assessment, and the condition thereon, which the appellant is aggrieved by, should lie, in accordance with section 128 of Customs Act, 1962, before Commissioner of Customs (Appeals).

5. For the above reason, we dismiss this appeal and, on the submission of Learned Counsel, grant liberty to the importer to approach the appropriate appellate authority for disposal of their grievance.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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